



STATE OF NEW JERSEY
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF C III)
COMMUNICATIONS OPERATIONS, LLC FOR)
APPROVAL TO PROVIDE INTEREXCHANGE)
TELECOMMUNICATIONS SERVICES IN THE)
STATE OF NEW JERSEY)

ORDER

DOCKET NO. TE03030219

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N. J. S. A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and by letter dated March 24, 2003, C III Communications Operations, LLC ("Petitioner" or "C III Ops") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting approval for authority to provide interexchange telecommunications services in the State of New Jersey.

C III Ops is a privately held company formed under the laws of the State of Delaware. C III Ops is a wholly owned subsidiary of C III Communications, LLC ("C III"). C III currently does not hold any authority to provide telecommunications services. Petitioner's principal offices are located at 1122 Capital of Texas Highway South, Austin, Texas 78746-6426.

Petitioner has submitted copies of its Certificate of Incorporation from the State of Delaware and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, C III Ops was formed to provide facilities-based interexchange telecommunications services throughout New Jersey. C III Ops currently does not hold any authority to provide telecommunications services. However, C III Ops is seeking all necessary authority from the Federal Communications Commission to obtain approval to provide competitive telecommunications services throughout the United States, including New Jersey.

The Petitioner states that pursuant to Docket No. TE99030202, on June 10, 1999, the Board granted authority to Broadwing Communications Services Inc. ("Broadwing-CSI") to provide

facilities-based telecommunications services in New Jersey under the name IXC Communications Services, Inc. ("IXC-CSI"). Later, IXC-CSI changed its name to Broadwing-CSI. On February 22, 2003, C III and C III Ops and its affiliates ("C III Companies") entered into a purchase agreement with Broadwing-CSI to acquire its broadband business, including the assets and customers of Broadwing Telecommunications Inc. ("Broadwing-TI"). Concurrently with the filing of the said Petition, per Docket No. TM03030221, C III and C III Ops along with Broadwing-CSI and Broadwing-TI ("Broadwing Companies") filed a Joint Petition with the Board for authority to transfer the assets of the Broadwing Companies to C III Ops. Broadwing-CSI currently does not serve end-user customers, but serves as a wholesale provider of service to other carriers. Broadwing-TI provides resold intrastate interexchange services in forty-eight states, including New Jersey. Petitioner states that the operating authority requested in its Petition is necessary in order for C III Ops to take ownership and control of those assets and continue providing services to the customers currently served by the Broadwing Companies.

According to the Petitioner, the proposed transaction contemplates that Broadwing-CSI would sell to C III its entire broadband business, which includes interstate and intrastate long distance and private line services. C III, through its wholly owned subsidiary, C III Ops, would continue to provide service to all of Broadwing companies' existing customers under the trade name "Broadwing". In addition, C III Ops, through its wholly owned subsidiary C III Communications Employees, Inc., would retain all of Broadwing-CSI's current employees. As a result, substantially all of the assets, including customers of Broadwing Companies, would be transferred to C III Ops.

According to the Petition, the following companies have indirect financial interest in the Petitioner:

- (a) Corvis Corporation ("Corvis"), a Delaware corporation, is a publicly traded company (NASDAQ:CORV). Corvis is a world leader in the provision of optical network solutions. Corvis is the majority and controlling owner of C III, a parent company of the Petitioner. Corvis does not currently hold any authority to provide telecommunications services;
- (b) Cequel III, LLC ("Cequel III") was organized as a privately held company in the State of Delaware in January 2002. Cequel III is a minority owner of C III and would control less than one percent of the voting interest of C III, a parent company of the Petitioner. Cequel III's mission is to acquire or invest in, and subsequently manage, growth-oriented firms in the telecommunications and cable industries, focusing on those companies that offer platform for future acquisitions and industry consolidation;
- (c) Broadwing-CSI is a parent company of Broadwing-TI, a Delaware corporation. Broadwing-CSI is a wholly owned subsidiary of Broadwing Communications Inc. ("Broadwing Communications"), a Delaware corporation, which in turn is a wholly owned subsidiary of Broadwing, Inc., a Ohio corporation. Broadwing Inc., a publicly traded company (NYSE:BRW), is an integrated communications company comprised of Broadwing Communications and Cincinnati Bell. Broadwing Inc., is headquartered in Cincinnati, Ohio. Broadwing Inc., has a minority (less than three percent) non-voting interest in C III, a parent company of Petitioner.

According to the Petitioner, upon the closing of the proposed transactions, C III and C III Ops will take necessary actions to effectuate their name change to Broadwing, LLC and Broadwing Communications, LLC, respectively. In addition, Broadwing Inc., Broadwing Communications, Broadwing-CSI and Broadwing-TI will be renamed. The new name will not include "Broadwing" because as part of the purchase agreement, C III Ops will purchase the trade name "Broadwing" and will continue to provide service to Broadwing Companies' customers under that name.

In its Petition, the Company seeks authority to provide facilities-based, resold interexchange telecommunications services (switched long distance) and interexchange private line services. The Petitioner proposes to adopt Broadwing-CSI's and Broadwing-TI's current effective tariffs to provide uninterrupted services to customers of the Broadwing Companies and to ensure the proposed transaction would not result in any change in the terms, conditions and price of their services. On March 24, 2003, pursuant to Docket No. TT03030220, the Petitioner filed a copy of the proposed tariff which is subject to Board approval.

Petitioner requests a waiver of N. J. S. A. 48:3-7.8 and N. J. A. C. 14:1-4.3 which require that books and records be kept within the State of New Jersey and be maintained in accordance with the Uniform System of Accounts ("USOA"), respectively. In the interest of efficiency and to prevent undue burden, Petitioner requests permission to maintain its books and records in accordance with Generally Accepted Accounting Principles and to keep all books, records, documents and other writings incident to the conduct of Petitioner's business in the State of New Jersey at Petitioner's corporate offices in Austin, Texas. Petitioner also states, upon written notice from the Board, it will provide its books and records at such time and place within New Jersey as the Board may designate and will pay any reasonable expenses for examination of the records.

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, C III Ops states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to C III Ops, are well qualified to execute its business plans and have extensive managerial and technical experience in the telecommunications industry.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N. J. S. A. 48:2-21.16(a)(4); N. J. S. A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed C III Ops's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner is in compliance with the Board's filing requirements which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide interexchange telecommunications services throughout New Jersey subject to approval of its tariff. The Board also FINDS that in accordance with N. J. S. A. 48:2-59 and 48:2-60 and N. J. S. A. 52:27E-61 and 52:27E-62, the Petitioner is subject to an annual assessment by both the Board and Division of Ratepayer Advocate, respectively. The Board notes that the Petitioner will not be permitted to provide telecommunications services until a tariff is approved by the Board.

The Board HEREBY ORDERS that:

- 1) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 2) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Audits, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report the company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's responsibility to obtain them from the Board. It is also the Petitioner's responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements

that the Petitioner maintain its books and records in accordance with USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board books and records upon 48 hours notice, and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records in accordance with USOA and in New Jersey.

DATED: 6/20/03

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

(SIGNED)

JACK ALTER
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

IN THE MATTER OF THE PETITION OF C III COMMUNICATIONS OPERATIONS, LLC
FOR AUTHORITY TO PROVIDE INTEREXCHANGE TELECOMMUNICATIONS
SERVICES IN THE STATE OF NEW JERSEY

DOCKET NO. TE03030219

SERVICE LIST

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